of pilings. In the instant case a further recovery was sought for damages caused by the "improper construction of the defendant's track." It was *held,* that since the plaintiff had elected to treat his first suit as a vehicle for recovery for permanent injury, thus obtaining payment on the basis that the value of the farm had been impaired for all time, he was "estopped" to bring suit for subsequently accruing damages to a crop. *Thompson* v. *Ill. Central Ry. Co.* (Iowa, 1920), 179 N. W. 191.

The court argued that there was not any distinction in the two causes of action alleged but even admitting that there was such a distinction, nevertheless "the naked fact that a third means for producing these results was for the first time urged in the second suit will not make the first suit less effective as an estoppel than if all three means that caused the injury had been named in both suits." It was decided in *Stodgill* v. *Chicago Railroad,* (1880), 53 Iowa 341, that a railroad was a "permanent structure." In *Bennett* v. *City of Marion,* (1903), 119 Iowa 473, it was held that a sewer system was not a "permanent structure." In *Uline* v. *Ry.,* (1886), 101 N. Y. 98, it was held that a railway embankment was not a "permanent structure." It is generally admitted that for an injury caused by a "permanent structure" the measure of damages is the permanent depreciation in the value of the land, and that there cannot be successive suits for successive losses. *Chicago Ry.* v. *Loeb,* (1884), 118 Ill. 203; *Highland A. Ry. Co.* v. *Mathews,* (1892), 99 Ala. 24; *Jacksonville, etc., Ry. Co.* v. *Lockwood,* (1894), 33 Fla. 573; *Allen* v. *Macon D. and S. Ry. Co.,* (1899), 107 Ga. 838. The argument in the instant case seems to turn on the distinction between (1) a "permanent structure" causing a nuisance, and (2) a structure which, although in itself "permanent", "may or may not be injurious" in the future. In (1) it is admitted, as stated above, that there can be but one recovery, although the structure causes repeated losses—the recovery being for permanent depreciation. See cases cited *supra.* If "permanent structure" is used as in (2), then the recovery in the first suit is limited to the loss occurring before the trial, and successive suits may be brought for recurring injuries. *Carl* v. *Sheboygan Ry. Co.* (1879), 46 Wis. 625; *Harmon* v. *Railroad,* (1889), 87 Tenn. 614; *Savannah Ry. Co.* v. *Bourquin,* (1874), 51 Ga. 378; *Railroad* v. *Biggs,* (1889), 52 Ark. 240; *Canal Corporation* v. *Hitchings,* (1876), 65 Me. 140; *Troy* v. *Ry. Co.,* 3 Foster, (N. H.), 83. See also the *Harvey Case,* (1906), 129 Iowa, 465, a leading case reviewing many of the authorities. The court in the instant case held that since the trial court in the first suit adopted (1), the plaintiff in this suit was "estopped", as it said, from resorting to (2). The failure of the courts to distinguish between these two theories is the cause of much confusion in the decisions. The instant case illustrates very well how such confusion may arise. After the case is properly placed in either of the two above categories it is easy to apply the governing principles, which are simple and well settled.

DEEDS—DELIVERY IN ESCROW TO GRANTEE.—P delivered a contract under seal to purchase land of D, but delivery was made conditional upon D obtaining an amendment to a bank charter. D, though unable to obtain the amendment, nevertheless started a suit at law to recover the purchase money under

the contract. P brought the present action to restrain the suits at law. *Held,* for P, for a sealed instrument absolute on its face may be shown to have been delivered conditionally to the grantee by parol evidence. *Whitaker* v. *Lane,* (Va., 1920), 104 S. E. 252.

This case is illustrative of a tendency on the part of the American courts to depart from the rule announced in *Whyddon's Case,* Cro. Eliz. 520, that a delivery to the grantee in escrow, "let the form of the words be what they may, is absolute and the deed shall take effect as his deed presently", SHEPHERD'S TOUCHSTONE, § 59. The former cases in Virginia had abided by the old rule, but the principal case, after an exhaustive review of the authorities, discards it as being suited only to the formalism of the medieval mind. The problem involved was discussed in 18 MICH. L. REV. 314, where a similar conclusion was reached. In *Wipfler* v. *Wipfler,* 153 Mich. 18, the Michigan Supreme Court followed the old rule with great reluctance, but in *Phillips* v. *Farmers Insurance Co.,* 175 N. W. 144, commented upon in 18 MICH. L. REV. 425, a conclusion was reached which is difficult to reconcile with the principle announced in the earlier case. That the vast weight of authority in America still remains in favor of the rule laid down in *Whyddon's Case* cannot admit of a doubt, (16 L. R. A. N. S. 940), but where the evidence is clear no good reason readily comes to mind why, as between the parties to the deed, the principal case should not be followed.

DESCENT AND DISTRIBUTION—EFFECT OF STATUTE DISINHERITING ONE CONVICTED OF KILLING HIS ANCESTOR.—Husband and wife were living in Kansas. Husband owned land in Oklahoma. Wife was convicted in Kansas of manslaughter for the killing of husband. Wife brought suit in the Federal Court against the daughter claiming a share of the husband's land in Oklahoma. The Oklahoma statute provided that "no person who is convicted of having taken or causes or procures another so to take, the life of another, shall inherit from such person, or receive any interest in the estate of the decedent, or take by devise or legacy, or descent or distribution, from him, or her, any portion of his or her, estate." There was also a statute in Kansas similar in all material respects to the one just quoted. *Held,* that the Kansas statute is a law of inheritance, not a law fixing the status of persons domiciled within the state, and therefore cannot control inheritance as to lands in Oklahoma; and that the Oklahoma statute disqualifies a person from inheriting only on conviction in the courts of that state, so that the wife, convicted in Kansas, can inherit an interest in the husband's lands located in Oklahoma. *Harrison* v. *Moncravie,* (July, 1920), 264 Fed. 776.

There is some conflict in the cases on the question whether a murderer can acquire, by descent or distribution, the title to the property of his victim and keep it. In *Riggs* v. *Palmer,* 115 N. Y. 506, a beneficiary under a will had murdered the testator in order to prevent him from revoking the will and it was held that the beneficiary, by reason of the crime committed by him, was deprived of any interest in the estate left by the victim, and so was not entitled to the property, either as donee under the will or as heir or next of kin. In the later case of *Ellison* v. *Wescott,* 148 N. Y. 149, the court ex-